



City of Newburgh Council Work Session

5:30 pm

December 8, 2011

AGENDA

1. 5:30 (early start) Executive Session:
 - a. Pending Litigation
2. Presentations:
 - a. Update on Development Projects – Ian MacDougall
 - b. Insurance Renewals – Kevin Barry, Arthur J. Gallagher
3. Finance Department:
 - a. (Res. 239) Amendment to the term of the Memorandum of Understanding between the City of Newburgh and the Police Superior Officers Association which provided additional benefits to Police Sergeant Frank Labrada while serving active duty in the military due to a delay in the date of deployment.
 - b. (Res. 240) Declaring a metal file card cabinet surplus and gifting it to the Port Jervis City Clerk's office.
 - c. (Res. 241) Authorizing the transfer of \$80,000.00 from Special Items/Contingency Emergency to Water Administration/Motor Equipment in order to purchase a utility truck.
 - d. Year End Reconciliations of 2011 Budget (figures being finalized – resolution to be provided shortly)
4. Planning and Development/Real Estate:
 - a. Update on the transfer of City-owned property to the Newburgh Land Bank
 - b. (Res. 242) Authorizing the re-purchase of 82 Wisner Avenue by Agnes Pardee
 - c. 100 Renwick Street Release of Restrictive Covenants (see request)
 - d. (Res. 243) South Street Park Cooperation Agreement
 - e. Discussion of the Ty Crabb Park - Revision to Agreement with Architect
 - f. Award of bid for demolition projects under CDBG – bid opening Monday, Dec. 5
5. Engineering:
 - a. (Ord. 21) Amendment to the parking regulations along Dr. Martin Luther King, Jr. Boulevard

- b. (Res. 244) Agreement with Bell Engineering, PLLC to provide geographic information systems data assistance necessary for the progression of several projects in the City.
- c. Discussion of a contract for solids handling evaluation/belt filter press at the Wastewater Treatment Plant
- d. Discussion of consulting services regarding the dam assessment at Muchattoes Lake
- e. Discussion of the water tank consultant selection – proposals due Monday, Dec. 5

6. Executive Session:

- a. Collective Bargaining
- b. Pending Litigation
- c. Matters pertaining to the appointment of particular person

RESOLUTION NO.: 239-2011

OF

DECEMBER 12, 2011

A RESOLUTION AMENDING RESOLUTION 135-2011
APPROVING A MEMORANDUM OF UNDERSTANDING
WITH THE POLICE SUPERIOR OFFICERS ASSOCIATION
OF NEWBURGH, NEW YORK, INC. TO PROVIDE
FOR ADDITIONAL BENEFITS PROVIDED FOR
IN SECTION 242 OF THE MILITARY LAW
FOR POLICE SERGEANT FRANK LABRADA
WHILE SERVING ACTIVE DUTY IN THE MILITARY

WHEREAS, this Council, by Resolution No.: 135-2011 of July 11, 2011, approved a Memorandum of Understanding ("MOU") with the Police Superior Officers Association of Newburgh, New York, Inc. to provide for additional benefits provided for in Section 242 of the Military Law for Police Sergeant Frank Labrada while serving active duty in the Military effective on or about November 30, 2011; and

WHEREAS, Sergeant Labrada has advised that deployment will now take place on or about January 28, 2012; and

WHEREAS, it is necessary and appropriate to authorize the Acting City Manager to execute an amended "MOU" reflecting the new deployment date; and

WHEREAS, all other terms and conditions of the "MOU" authorized by Resolution No.: 135-2011 of July 11, 2011 shall remain in full force and effect; and

WHEREAS, this Council has determined that authorizing the execution of an amended MOU is in the best interests of the City of Newburgh and its employee;

NOW, THEREFORE, BE IT

RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute on behalf of the City of Newburgh, the amended Memorandum of Understanding annexed hereto, or in substantially the same form; and be it further

RESOLVED, that the Council of the City of Newburgh hereby extends its esteem, gratitude, appreciation and admiration to every member of the Union and all others called to active duty on behalf of this Country.

MEMORANDUM OF UNDERSTANDING

BETWEEN
POLICE SUPERIOR OFFICERS ASSOCIATION OF NEWBURGH, INC.
AND
THE CITY OF NEWBURGH

WHEREAS, the CITY OF NEWBURGH (CITY) and POLICE SUPERIOR OFFICERS ASSOCIATION OF NEWBURGH, INC. (PSOA), are desirous of entering into an agreement between the parties to provide for extended military benefits for members who are military reservists and are federally activated to military duty as of the result of the events of September 11, 2001 and the ongoing conflicts overseas beyond the benefits mandated by New York State Military Law.

IT IS HEREBY UNDERSTOOD AND AGREED BY THE PARTIES HERETO
AS FOLLOWS:

1. Members of the PSOA ordered to active military duty (including ordered service in the reserve force) as a result of the events of September 11, 2001, and the ongoing conflicts overseas, shall be entitled to receive the following benefits:

- a) Members who have exhausted their entitlement to paid military leave under Section 242 of the Military Law shall be entitled to an additional thirty (30) calendar days or twenty-two (22) working days of supplemental military leave at full pay, whichever is greater, in any one calendar year, not exceeding in total sixty (60) calendar days for any one continuous period of absence;
- b) Members who have exhausted their entitlement to the paid leave set forth in paragraph (a) above shall be entitled to military leave at a rate of pay equal to the Member's rate of pay pursuant to the Collective Bargaining Agreement less the compensation received by the Member as a result of his or her active duty. The Member shall provide the city with an "enlisted pay chart" establishing the applicable military rate of pay.;
- c) Members shall receive the same individual or family health insurance benefits provided pursuant to the Collective Bargaining Agreement, as received by such members prior to their date of activation;
- d) Members shall accrue vacation leave at the rate set forth in the Collective Bargaining Agreement during the period they receive benefits pursuant to this Memorandum.

2. The benefits provided in paragraph 1 of this Memorandum shall be in effect from January 28, 2012 to and including January 28, 2013. The terms of this Memorandum may be extended by resolution in the event that the Member's active duty status extends beyond January 28, 2013.

3. The parties agree and acknowledge that this agreement shall not establish any past practice or precedent for members called for active military duty for any reason other than the events of September 11, 2001, and currently ongoing overseas conflicts in Iraq, Afghanistan and related areas.

Dated: December _____, 2011
Newburgh, New York

AGREED TO:

CITY OF NEWBURGH

By: _____
Richard F. Herbek, Acting City Manager

POLICE SUPERIOR OFFICERS
ASSOCIATION OF NEWBURGH, INC.

By: _____
, President

RESOLUTION NO.: 240-2011

OF

DECEMBER, 12, 2011

A RESOLUTION DECLARING AS SURPLUS
AN OBSOLETE 4"x 6" CARD-STYLE 5-DRAWER METAL FILING CABINET
FROM THE CITY OF NEWBURGH ASSESSOR'S OFFICE TO BE
GIVEN TO THE CITY OF PORT JERVIS CITY CLERK'S OFFICE

WHEREAS, the City Assessor no longer keeps information on 4" x 6" cards and has emptied the card-style 5-drawer metal filing cabinet; and

WHEREAS, no other City department has use for such a filing cabinet; and

WHEREAS, the City of Port Jervis City Clerk put out a request for such a filing cabinet through the New York State Archives; and

WHEREAS, this Council has determined that giving such filing cabinet to the City of Port Jervis is in the best interest of each municipality;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the obsolete 4" x 6" card-style 5-drawer metal filing cabinet be declared surplus by the City of Newburgh and given to the City of Port Jervis Office of the City Clerk.

RESOLUTION NO.: 241 - 2011

OF

DECEMBER 12, 2011

RESOLUTION AMENDING RESOLUTION NO: 264-2010,
THE AMENDED 2011 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK
TO TRANSFER \$80,000.00 FROM CONTINGENCY-EMERGENCY TO
WATER ADMINISTRATION MOTOR EQUIPMENT
IN CONNECTION WITH THE PURCHASE OF A UTILITY TRUCK

BE IT RESOLVED, by the Council of the City of Newburgh, New York, that Resolution
No: 264-2010, the 2011 Amended Budget of the City of Newburgh, is hereby amended as follows:

		<u>Decrease</u>	<u>Increase</u>
Special Items	F.1900		
Contingency-Emergency	.1990	\$80,000.00	
Water Administration	F.8310		
Motor Equipment	.0202		\$80,000.00

RESOLUTION NO.: 242 - 2011

OF

DECEMBER 12, 2011

A RESOLUTION TO AUTHORIZE THE RE-PURCHASE OF
REAL PROPERTY KNOWN AS 82 WISNER AVENUE
(SECTION 26, BLOCK 1, LOT 61)
AT PRIVATE SALE TO AGNES PARDEE

WHEREAS, the City of Newburgh has acquired title to several parcels of real property by foreclosure *In Rem* pursuant of Article 11 Title 3 of the Real property Tax law of the State of New York; and

WHEREAS, pursuant to Section 1166 of the Real Property Tax Law the City may sell properties acquired by foreclosure *In Rem* at private sale; and

WHEREAS, Agnes Pardee, the former owner of 16 Lutheran Street, being more accurately described as Section 29, Block 8, Lot 12 on the official tax map of the City of Newburgh, by her attorney, has requested to re-purchase the property at private sale; and

WHEREAS, the City Council of the City of Newburgh has determined that it would be in the best interests of the City of Newburgh to allow the former owner to re-purchase this property, without the need for litigation and subject to any liens, encumbrances or mortgages of record that existed against this property at the time the City of Newburgh took title in the tax foreclosure proceeding, provided that all taxes, interest and penalties owed are paid expeditiously;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the sale of 82 Wisner Avenue, Section 26, Block 1, Lot 61, to Agnes Pardee be and hereby is confirmed and that the City Manager is authorized and directed to execute and deliver a quitclaim deed to said purchaser upon receipt of all past due tax liens, together with all interest and penalties accruing thereon, and all currently due taxes and charges are paid, in full, for a total amount of \$15,480.42, no later than December 30, 2011; and

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York, that the parcel is not required for public use.

4c

LAW OFFICES
WERNER & TURNER LLC

5020 ROUTE 9W, SUITE 104
AT INTERSTATE 84
NEWBURGH, NEW YORK 12550

(845) 562-1154
FACSIMILE SERVICE NOT ACCEPTED

JEFFREY RUSSELL WERNER
(NY, MD, D.C. BAR)

NATASHA M. TURNER
(NY, NJ BAR)

LOUIS WERNER
1917-2000

November 16, 2011

Office of Corporation Counsel
Attn: Michelle Kelson
City Hall – 83 Broadway
Newburgh, New York 12550

RECEIVED

NOV 17 2011

CORPORATION COUNSEL

Re: 100 Renwick Street, Newburgh, NY

Dear Ms. Kelson:

I represent Arial Tavares in connection with his proposed real estate sale of the property located at 100 Renwick Street, City of Newburgh, New York to Bluestone Developers, Inc.

We have a copy of an old deed from January 4, 2001 which shows five (5) restrictive covenants in the deed. The property was then sold to my client and he took a new deed without mention of the restrictive covenants. My client is now attempting to sell the property to Bluestone Developers, Inc. and the purchaser has requested that the City of Newburgh remove the restrictive covenants. A Certificate of Occupancy has been issued for the property.

We are respectfully requesting that your office contact the Building Department to confirm that there is a C.O. for the property. Once you have this confirmation, we are respectfully requesting that your office direct City Council to remove the restrictions.

Please find enclosed a copy of the deed with the restrictive covenants as well as the fully executed real estate contract in connection with this property. The sale will not take place until the covenants have been removed from the deed so we ask that you respond as promptly as you are able.

RESOLUTION NO.: 243 - 2011

OF

DECEMBER 12, 2011

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE A COOPERATION AGREEMENT BETWEEN
THE CITY OF NEWBURGH AND JOSCOS, INC.
REGARDING THE ESTABLISHMENT OF SOUTH STREET PARK**

WHEREAS, the City of Newburgh Community Development Agency and Joscoss, Inc. are parties to a Contract for Sale of Land for Private Redevelopment dated June 23, 1998, under which Joscoss constructed a marina; and

WHEREAS, the City of Newburgh is contemplating the development of South Street Park on the property formerly known as South Street located easterly of the railroad tracks ("Lower South Street"); and

WHEREAS, Joscoss is the owner of that portion of Lower South Street located upland of the high water mark of the Hudson River ("Joscoss Parcel") and is willing to donate the parcel to the City to be part of the South Street Park; and

WHEREAS, the City is the owner of the underwater portion of the former South Street ("City Underwater Parcel"); and

WHEREAS, a portion of Joscoss' marina extends over the City Underwater Parcel and the City has advised Joscoss that the City may build an in water structure extending from the South Street Park over the City Underwater Parcel which will necessitate removal of the South Street Marina Section; and

WHEREAS, the City and Joscoss have agreed to cooperate in the development of South Street Park and such cooperation requires an agreement between the parties; and

WHEREAS, the City Council of the City of Newburgh finds that entering into a Cooperation Agreement with Joscoss, Inc. for the establishment and development of South Street Park is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute the attached South Street Park Cooperation Agreement between the City of Newburgh and Joscoss, Inc., in substantially the

same form as annexed hereto, with such other documents as Corporation Counsel may require to effectuate the terms of the Agreement.

DRAFT

A SOUTH STREET PARK COOPERATION AGREEMENT dated as of ~~December~~October ___, 2011 by and between the CITY OF NEWBURGH, a New York municipal corporation with offices at 83 Broadway, Newburgh, New York 12550 ("City"), and JOSCOS, INC., a New York business corporation with offices at 1089 Little Britain Road, New Windsor, New York 12553 ("Joscoss").

WHEREAS, the City and Joscoss wish to cooperate on the establishment of a public park ("South Street Park") on the property formerly known as South Street located easterly of the railroad tracks ("Lower South Street"); and

WHEREAS, Joscoss is the owner of that portion of Lower South Street located upland of the high water mark of the Hudson River as described on Schedule A attached hereto as the ("Joscoss Park Parcel") which it is willing to donate to the City to be part of the South Street Park; and

WHEREAS, the City is the owner of the underwater portion of the former South Street described on Schedule ~~BA~~A attached hereto as the ("City Underwater Parcel"); and

WHEREAS, a portion of Joscoss' marina, which was approved by the City Planning Board and consented to by the U.S. Army Corp of Engineers as contemplated in that Contract for Sale of Land for Private Redevelopment by and between the Newburgh Community Development Agency and Joscoss dated June 23, 1998, extends over the City Underwater Parcel ("South Street Marina Section"); and

WHEREAS, the City has advised Joscoss that it may contemplate in the future the City may build an in water structure extending from the South Street Park over the City Underwater Parcel (the "Future in Water Structure") which will necessitate removal of the South Street Marina Section;

WHEREAS, an "In Water Structure" is defined by the Local Waterfront Revitalization Plan (LWRP) as wharves, docks, bulkheads, pilings, moorings, piers, jetties, platforms, breakwaters or other structures";

WHEREAS, for the purposes of this Agreement the definition of "Future In Water Structure" is defined and limited to docks, piers, and platforms;

NOW, THEREFORE, the City and Joscoss agree as follows:

1. Within one (1) month of the date of execution of this Agreement, Joscoss shall execute and deliver to the City a Quitclaim Deed for the Joscoss Park Parcel, in the form attached hereto as Schedule ~~CB~~B. The City shall provide a metes and bounds legal description and be responsible for all costs of recording such Deed.

2. Within three (3) years from the receipt of a written notice from the City to Joscoss that the City intends to proceed with construction of a Future in Water Structure, together with the date for commencement of construction of the Future in Water Structure, Joscoss shall remove the

portion of the South Street Marina Section, affected by that improvement, which is located directly over the City Underwater Parcel, including all improvements and supports located in such Section.

3. Joscoss shall at all times limit the height (excluding masts) of the vessels in the water at the northerly portion of the South Street Marina Section that are located directly over the City Underwater Parcel on the Western (inside) of in water structure to six (6) feet above the water line.

4. The City and Josco shall cooperate, collaborate, and accommodate each other, at no cost to Josco, in connection with planning; obtaining funding and obtaining local, State, and Federal approvals, if any ; and constructing the South Street Park and the future In Water structure.

5. This Agreement may only be amended by a writing signed by both the City and Joscoss.

6. This Agreement shall bind and enure to the benefits of the City's and Joscoss' respective successors and assigns.

CITY OF NEWBURGH

By: _____
Richard F. Herbek
Acting City Manager

JOSCOS, INC.

By: _____
Joseph Bonura

By: _____
Nicola Citera

STATE OF NEW YORK:

SS:

COUNTY OF ORANGE:

On the ____ day of November, in the year 2011, before me, the undersigned, a Notary Public in and for said State, personally appeared RICHARD F. HERBEK, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

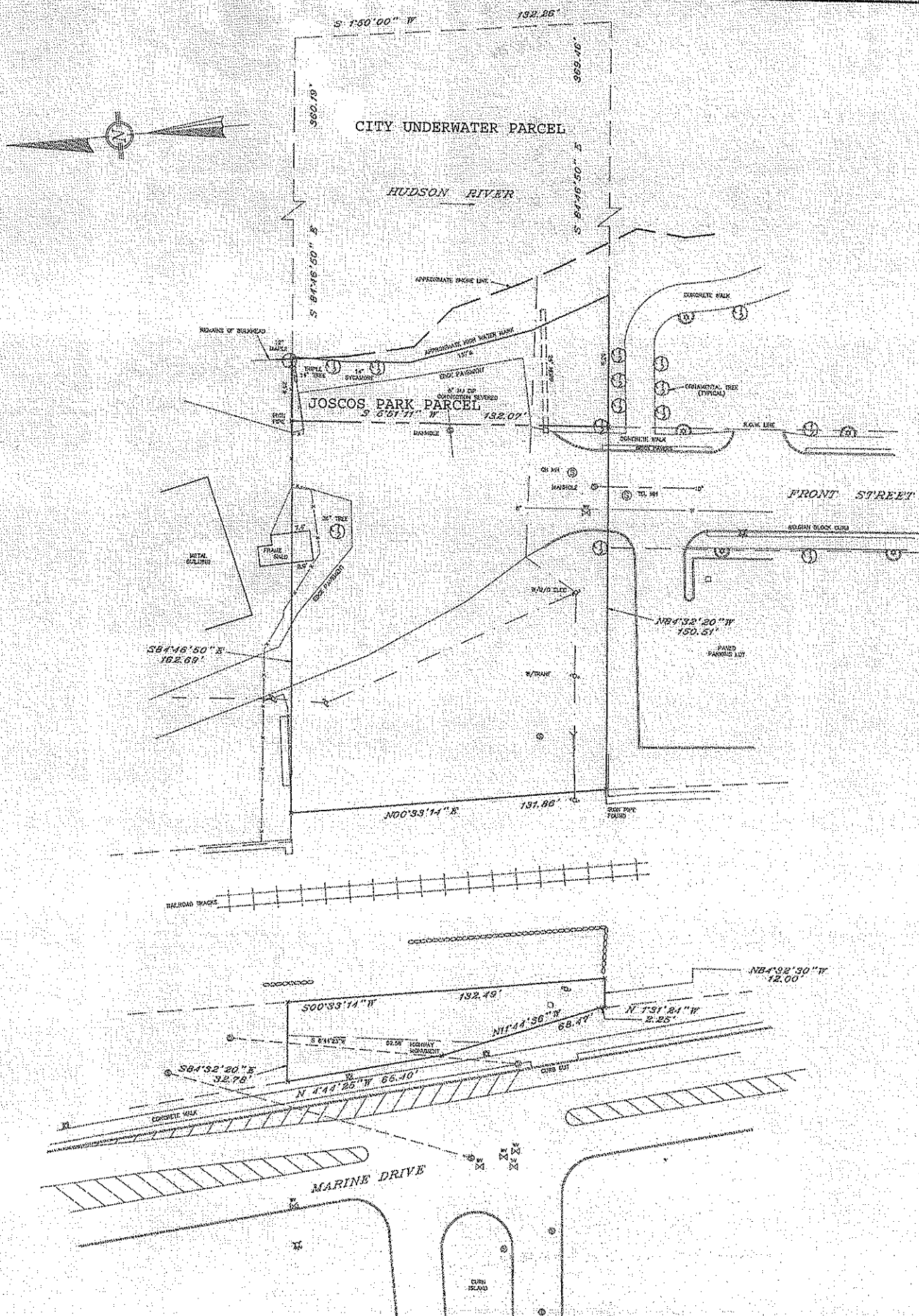
STATE OF NEW YORK:

SS:

COUNTY OF ORANGE:

On the ____ day of November, in the year 2011, before me, the undersigned, a Notary Public in and for said State, personally appeared JOSEPH BONURA AND NICOLA CITERA, personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their capacity, and that by their signature on the instrument, the individuals, or the persons upon behalf of which the individuals acted, executed the instrument.

Notary Public



THIS INDENTURE, made the _____ day of _____, in the year two thousand _____

BETWEEN:

JOSCOS INC., having an address of, _____, party of the first part, and

THE CITY OF NEWBURGH, a municipal corporation organized under the laws of the State of New York and having its principal office at City Hall, 83 Broadway, Newburgh, New York 12550, party of the second part.

WITNESSETH, that the party of the first part, in consideration of Ten Dollars and other valuable consideration paid by the party of the second part, does hereby remise, release and quitclaim unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

ALL that certain plot, piece or parcel of land situate, lying and being in the City of Newburgh, Orange County, New York, being a portion of Lower South Street located upland of the high water mark of the Hudson River, being more accurately described in Schedule A annexed hereto.

TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof; TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to such premises; TO HAVE AND TO HOLD the premises herein granted unto the party of the second part forever.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF:

BY: _____

STATE OF NEW YORK)
) ss:
COUNTY OF ORANGE)

On the ____ day of _____ in the year 20____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted; executed the instrument.

ORDINANCE NO.: 21 - 2011

OF

DECEMBER 12, 2011

AN ORDINANCE AMENDING
SECTION 288-71. SCHEDULE XIII: PARKING PROHIBITED AT ALL TIMES
OF THE CODE OF ORDINANCES REGARDING ROBINSON AVENUE
AND REVEREND DR. MARTIN LUTHER KING JR. BLVD
FORMERLY KNOWN AS WATER STREET

BE IT ORDAINED, by the Council of the City of Newburgh, New York that Section 288-71, Schedule XIII, Parking Prohibited at all times, be and is hereby amended as follows:

§ 288-71. Schedule XIII: Parking Prohibited at All Times.

In accordance with the provisions of § 288-21, no person shall park a vehicle at any time upon any of the following described streets or parts of streets:

Name of Street	Side	Location
Robinson Avenue	Both	From Broadway to First Street <u>north City Line</u>

Robinson Avenue	East	From Third Street to City line
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Robinson Avenue	West	From South Street to City line
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Robinson Avenue	West	From a point 200 feet south of the south edge of South Street to South Street
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<u>Rev. Dr. Martin Luther</u> <u>King Jr. Blvd. f/k/a Water</u> <u>Street</u>	East	<u>Leroy Place to Broad Street</u>
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<u>Rev. Dr. Martin Luther</u> <u>King Jr. Blvd. f/k/a Water</u> <u>Street</u>	East	<u>From a point 440 feet north of Fourth Street</u>
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Underlining denotes additions

~~Strikethrough~~ denote deletions

to a point 120 feet south of Carpenter
Avenue

Rev. Dr. Martin Luther
King Jr. Blvd. f/k/a Water

Street East From a point 415 feet north of Washington
Street to the South City line

Rev. Dr. Martin Luther
King Jr. Blvd. f/k/a Water

Street West Both From Leroy Place to the south City Line

THIS ORDINANCE SHALL TAKE EFFECT IMMEDIATELY.

Underlining denotes additions

~~Strikethrough~~ denote deletions

RESOLUTION NO.: 244 - 2011

OF

DECEMBER 12, 2011

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ENTER INTO AN AGREEMENT FOR VENDOR SERVICES
WITH BELL ENGINEERING, PLLC TO PROVIDE CONSULTING SERVICES
TO THE CITY OF NEWBURGH IN CONNECTION WITH
GEOGRAPHIC INFORMATION SYSTEMS DATA**

WHEREAS, the City of Newburgh is currently involved in several projects which expertise in the field of Geographic Information Systems ("GIS") data; and

WHEREAS, the City has advertised for a GIS Analyst and has been unable to fill the position; and

WHEREAS, Bell Engineering, PLLC has submitted a proposal to perform GIS services for the City of Newburgh at a rate of \$65.00 per hour for general GIS consulting work and \$85.00 per hour for GIS Field Collection work with Data Collector, with such funding to be derived from A.1440.0455; and

WHEREAS, it is necessary and appropriate to enter into an agreement for vendor services in connection with such consulting services; and

WHEREAS, this Council has determined that entering into such agreement is in the best interests of the City of Newburgh and its future development;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute an agreement, in substantially the same form annexed hereto and subject to approval of the Corporation Counsel with such other terms and conditions as Counsel may require, with Bell Engineering, PLLC to provide consulting services to the City of Newburgh in connection with Geographic Information Systems data.

AGREEMENT FOR VENDOR SERVICES

THIS AGREEMENT is entered into as of this _____ day of _____, 2011, by and between the CITY OF NEWBURGH, a municipal corporation chartered under the authority of the State of New York, hereinafter referred to as the "CITY," with principal offices at 83 Broadway, City Hall, Newburgh, New York 12550; and BELL ENGINEERING, PLLC, 334 North Fostertown Drive, Newburgh, New York 12550, hereinafter referred to as "VENDOR."

ARTICLE 1. SCOPE OF WORK

VENDOR agrees to perform Geographic Information Systems Consulting Services and GIS Field Collection Services, hereinafter "SERVICES". VENDOR agrees to perform the SERVICES and/or supply the goods in accordance with the terms and conditions of this Agreement. It is specifically agreed that the CITY will not compensate VENDOR for any SERVICES and/or goods provided outside those specifically identified in Schedule A, without prior authorization, evidenced only by a written Change Order or Addendum to this Agreement executed by the City Manager of the CITY after consultation with the City Department Head responsible for the oversight of this Agreement (hereinafter "Department Head").

Any and all reports, documents, charts, graphs, maps, designs, images, photographs, computer programs and software, artwork, creative works, compositions, and the rights to employ, publish, disseminate, amend or otherwise use same, and/or any other intellectual property to be provided by VENDOR to CITY under the terms of this Agreement shall become the property of the CITY, unless otherwise provided for by the parties. As such, CITY, in its sole discretion, shall have the right to use, copy, disseminate and otherwise employ or dispose of such material in any manner as it may decide with no duty of compensation or liability therefore to VENDOR or to third parties. VENDOR shall have the affirmative obligation to notify CITY in a timely fashion of any and all limitations, restrictions or proprietary rights to such intellectual property and/or materials which may be

applicable which would have the effect of restricting or limiting the exercise of the CITY's rights regarding same. VENDOR agrees to defend, indemnify and hold harmless the CITY for failing to notify CITY of same.

ARTICLE 2. TERM OF AGREEMENT

VENDOR agrees to perform the SERVICES and/or supply goods beginning December 15, 2011, and ending December 31, 2012.

ARTICLE 3. COMPENSATION

For satisfactory performance of the SERVICES and/or receipt of conforming goods or, as such SERVICES or goods may be modified by mutual written agreement, the CITY agrees to compensate VENDOR in accordance with the fees and expenses as stated in Schedule A, which is attached to and is part of this Agreement. VENDOR SHALL submit to the CITY a monthly itemized invoice for SERVICES rendered during the prior month, or as otherwise set forth in Schedule A, and prepared in such form and supported by such documents as the CITY may reasonably require. The CITY will pay the proper amounts due VENDOR within sixty (60) days after receipt of a CITY Claimant's Certification form, and if the Claimant's Certification form is objectionable, will notify VENDOR, in writing, of the CITY'S reasons for objecting to all or any portion of the invoice submitted by VENDOR.

A not-to-exceed cost of \$15,500.00 has been established for the scope of SERVICES and/or the supply of goods rendered by VENDOR. Costs in excess of such not-to-exceed cost, if any, may not be incurred without prior written authorization of the City Manager of the CITY, evidenced only by a written Change Order or Addendum to this Agreement, after consultation with the Department Head. It is specifically agreed to by VENDOR that the CITY will not be responsible for any additional cost or costs in excess of the above noted not-to-exceed cost if the CITY'S authorization by the City Manager is not given in writing prior to the performance of the SERVICES giving rise to such excess or additional costs.

Any bills or invoices sent by VENDOR to the CITY more than one (1) year after services which are the subject of such billing have been rendered shall not be paid by the CITY and the CITY shall have no liability therefor.

ARTICLE 4. EXECUTORY CLAUSE

The CITY shall have no liability under this Agreement to VENDOR or to anyone else beyond funds appropriated and available for this Agreement.

ARTICLE 5. PROCUREMENT OF AGREEMENT

VENDOR represents and warrants that no person or selling agency has been employed or retained by VENDOR to solicit or secure this Agreement upon an agreement or upon an understanding for a commission, percentage, a brokerage fee, contingent fee or any other compensation. VENDOR further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties. VENDOR makes such representations and warranties to induce the CITY to enter into this Agreement and the CITY relies upon such representations and warranties in the execution hereof.

For a breach or violation of such representations or warranties, the CITY shall

have the right to annul this Agreement without liability, entitling the CITY to recover all monies paid hereunder and VENDOR shall not make claim or be entitled to recover, any sum or sums otherwise due under this Agreement. This remedy, if effected, shall not constitute the sole remedy afforded the CITY for such falsity or breach, nor shall it constitute a waiver of the CITY'S right to claim damages or otherwise refuse payment or to take any other action provided for by law or pursuant to this Agreement.

ARTICLE 6. CONFLICT OF INTEREST

VENDOR represents and warrants that neither it nor any of its directors, officers, members, partners or employees, have any interest nor shall they acquire any interest, directly or indirectly which would or may conflict in any manner or degree with the performance or rendering of the SERVICES herein provided. VENDOR further represents and warrants that in the performance of this Agreement, no person having such interest or possible interest shall be employed by it and that no elected official or other officer or employee of the CITY, nor any person whose salary is payable, in whole or in part, by the CITY, or any corporation, partnership or association in which such official, officer or employee is directly or indirectly interested shall have any such interest, direct or indirect, in this Agreement or in the proceeds thereof, unless such person submits a letter disclosing such an interest, or the appearance or potential of same, to the City Manager and a copy to the Corporation Counsel of the CITY in advance of the negotiation and execution of this Agreement.

For failure to submit such letter of disclosure, or for a breach or violation of such representations or warranties, the CITY shall have the right to annul this Agreement without liability, entitling the CITY to recover all monies paid hereunder and VENDOR shall not make claim for, or be entitled to recover, any sum or sums otherwise due under this Agreement. This remedy, if elected, shall not constitute the

sole remedy afforded the CITY for such falsity or breach, nor shall it constitute a waiver of the CITY'S right to claim damages or otherwise refuse payment to or to take any other action provided for by law, in equity or pursuant to this Agreement.

ARTICLE 7. FAIR PRACTICES

VENDOR and each person signing on behalf of the VENDOR represents, warrants and certifies under penalty of perjury, that to the best of their knowledge and belief:

A. The prices in this Agreement have been arrived at independently by VENDOR without collusion, consultation, communication, or agreement with any other bidder, proposer or with any competitor as to any matter relating to such prices which has the effect of, or has as its purpose, restricting competition;

B. Unless otherwise required by law, the prices which have been quoted in this Agreement and on the proposal or quote submitted by VENDOR have not been knowingly disclosed by VENDOR prior to the communication of such quote to the CITY or the proposal opening directly or indirectly, to any other bidder, proposer or to any competitor; and

C. No attempt has been made or will be made by VENDOR to induce any other person, partnership, corporation or entity to submit or not to submit a proposal or quote for the purpose of restricting competition.

The fact that VENDOR (i) has published price lists, rates, or tariffs covering items being procured, (ii) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (iii) has provided the same items to the other customers at the same prices being bid or quoted does not constitute, without more, a disclosure within the meaning of this Article.

ARTICLE 8. INDEPENDENT CONTRACTOR

In performing the SERVICES and/or supplying goods and incurring expenses under this Agreement, VENDOR shall operate as, and have the status of, an independent contractor and shall not act as agent, or be an agent, of the CITY. As an independent contractor, VENDOR shall be solely responsible for determining the means and methods of performing the SERVICES and/or supplying of the goods and shall have complete charge and responsibility for VENDOR'S personnel engaged in the performance of the same.

In accordance with such status as independent contractor, VENDOR covenants and agrees that neither it nor its employees or agents will hold themselves out as, nor claim to be officers or employees of the CITY, or of any department, agency or unit thereof by reason hereof, and that they will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the CITY including, but not limited to, Worker's Compensation coverage, health coverage, Unemployment Insurance Benefits, Social Security coverage or employee retirement membership or credit.

ARTICLE 9. ASSIGNMENT AND SUBCONTRACTING

VENDOR shall not assign any of its rights, interest or obligations under this Agreement, or subcontract any of the SERVICES to be performed by it under this Agreement, without the prior express written consent of the City Manager of the CITY. Any such subcontract, assignment, transfer, conveyance, or other disposition without such prior consent shall be void and any SERVICES provided thereunder will not be compensated. Any subcontract or assignment properly consented to by the CITY shall be subject to all of the terms and conditions of this Agreement.

Failure of VENDOR to obtain any required consent to any assignment, shall be grounds

for termination for cause, at the option of the CITY and if so terminated, the CITY shall thereupon be relieved and discharged from any further liability and obligation to VENDOR, its assignees or transferees, and all monies that may become due under this Agreement shall be forfeited to the CITY except so much thereof as may be necessary to pay VENDOR'S employees for past service.

The provisions of this clause shall not hinder, prevent, or affect any assignment by VENDOR for the benefit of its creditors made pursuant to the laws of the State of New York.

This agreement may be assigned by the CITY to any corporation, agency, municipality or instrumentality having authority to accept such assignment.

ARTICLE 10. BOOKS AND RECORDS

VENDOR agrees to maintain separate and accurate books, records, documents and other evidence and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

ARTICLE 11. RETENTION OF RECORDS

VENDOR agrees to retain all books, records and other documents relevant to this Agreement for six (6) years after the final payment or termination of this Agreement, whichever later occurs. CITY, or any State and/or Federal auditors, and any other persons duly authorized by the CITY, shall have full access and the right to examine any of said materials during said period.

ARTICLE 12. AUDIT BY THE CITY AND OTHERS

All Claimant Certification forms or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said Claimant's Certification forms or invoices are based are

subject to audit by the CITY. VENDOR shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the CITY so that it may evaluate the reasonableness of the charges, and VENDOR shall make its records available to the CITY upon request. All books, Claimant's Certification forms, records, reports, cancelled checks and any and all similar material may be subject to periodic inspection, review and audit by the CITY, the State of New York, the federal government, and/or other persons duly authorized by the CITY. Such audits may include examination and review of the source and application of all funds whether from the CITY, State, the federal government, private sources or otherwise. VENDOR shall not be entitled to any interim or final payment under this Agreement if any audit requirements and/or requests have not been satisfactorily met.

ARTICLE 13. INSURANCE

For all of the SERVICES set forth herein and as hereinafter amended, VENDOR shall maintain or cause to be maintained, in full force and effect during the term of this Agreement, at its expense, Workers' Compensation insurance, liability insurance covering personal injury and property damage, and other insurance with stated minimum coverages, all as listed below. Such policies are to be in the broadest form available on usual commercial terms and shall be written by insurers of recognized financial standing satisfactory to the CITY who have been fully informed as to the nature of the SERVICES to be performed. Except for Workers' Compensation and professional liability, the CITY shall be an additional insured on all such policies with the understanding that any obligations imposed upon the insured (including, without limitation, the liability to pay premiums) shall be the sole obligation of VENDOR and not those of the CITY. Notwithstanding anything to the contrary in this Agreement, VENDOR irrevocably waives all claims against the CITY for all losses, damages, claims or expenses resulting from

risks commercially insurable under this insurance described in this Article 13. The provisions of insurance by VENDOR shall not in any way limit VENDOR'S liability under this Agreement.

<u>Type of Coverage</u>	<u>Limit of Coverage</u>
Worker's Compensation	Statutory
Employer's liability or similar insurance	\$1,000,000 each occurrence
Automobile liability	\$1,000,000 aggregate
Bodily Injury	\$1,000,000 each occurrence
Property Damage	\$1,000,000 each occurrence
Comprehensive General Liability, including	\$1,000,000 aggregate
Broad form contractual Liability, bodily injury and property damage	\$2,000,000 each occurrence
Professional liability (If commercially available for your profession)	\$1,000,000 aggregate \$2,000,000 each claim

VENDOR shall attach to this Agreement certificates of insurance evidencing VENDOR'S compliance with these requirements.

Each policy of insurance shall contain clauses to the effect that (i) such insurance shall be primary without right of contribution of any other insurance carried by or on behalf of the CITY with respect to its interests, (ii) it shall not be cancelled, including, without limitation, for non-payment of premium, or materially amended, without fifteen (15) days prior written notice to the CITY, directed to the City Manager, the Corporation Counsel and to the Department Head and the CITY shall have the option to pay any necessary premiums to keep such insurance in effect and charge the cost back to VENDOR.

To the extent it is commercially available, each policy of insurance shall be provided on an "occurrence" basis. If any insurance is not so commercially available on an "occurrence" basis, it shall be provided on a "claims made" basis, and all such "claims made" policies shall provide that:

A. Policy retroactive dates coincide with or precede VENDOR'S start of the performance of this Agreement (including subsequent policies purchased as renewals or replacements);

B. VENDOR will maintain similar insurance for at least six (6) years following final acceptance of the SERVICES;

C. If the insurance is terminated for any reason, VENDOR agrees to purchase an unlimited extended reporting provision to report claims arising from the SERVICES performed or goods provided for the CITY; and

D. Immediate notice shall be given to the CITY through the City Manager of circumstances or incidents that might give rise to future claims with respect to the SERVICES performed under this Agreement.

ARTICLE 14. INDEMNIFICATION

VENDOR agrees to defend, indemnify and hold harmless the CITY, including its officials, employees and agents, against all claims, losses, damages, liabilities, costs or expenses (including, without limitation, reasonable attorney fees and costs of litigation and/or settlement), whether incurred as a result of a claim by a third party or any other person or entity, arising out of the SERVICES performed and/or goods supplied pursuant to this Agreement which the CITY or its officials, employees or agents, may suffer by reason of any negligence, fault, act or omission of VENDOR, its employees, representatives, subcontractors, assignees, or agents.

In the event that any claim is made or any action is brought against the CITY arising

out of the negligence, fault, act, or omission of an employee, representative, subcontractor, assignee, or agent of VENDOR either within or without the scope of his respective employment, representation, subcontract, assignment or agency, or arising out of VENDOR'S negligence, fault, act or omission, then the CITY shall have the right to withhold further payments hereunder for the purpose of set-off of sufficient sums to cover the said claim or action. The rights and remedies of the CITY provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

ARTICLE 15. PROTECTION OF CITY PROPERTY

VENDOR assumes the risk of and shall be responsible for, any loss or damage to CITY property, including property and equipment leased by the CITY, used in the performance of this Agreement and caused, either directly or indirectly by the acts, conduct, omissions or lack of good faith of VENDOR, its officers, directors, members, partners, employees, representatives or assignees, or any person, firm, company, agent or others engaged by VENDOR as an expert consultant specialist or subcontractor hereunder.

In the event that any such CITY property is lost or damaged, except for normal wear and tear, then the CITY shall have the right to withhold further payments hereunder for the purposes of set-off in sufficient sums to cover such loss or damage.

VENDOR agrees to defend, indemnify and hold the CITY harmless from any and all liability or claim for loss, cost, damage or expense (including, without limitation, reasonable attorney fees and costs of litigation and/or settlement) due to any such loss or damage to any such CITY property described in this Article.

The rights and remedies of the CITY provided herein shall not be exclusive and are in addition to any other rights and

remedies provided by law or by this Agreement.

ARTICLE 16. CONFIDENTIAL INFORMATION

In the course of providing the SERVICES and/or goods hereunder, VENDOR may acquire knowledge or come into possession of confidential, sensitive or proprietary information belonging to CITY. VENDOR agrees that it will keep and maintain such information securely and confidentially, and not disclose such information to any third parties, including the media, nor use such information in any manner publically or privately, without receiving the prior approval, in writing, of the CITY authorizing such use. VENDORS obligations under this clause to maintain the confidentiality of such information and to refrain from using such information in any manner without the prior written approval of the CITY shall survive the termination or expiration of this Agreement.

ARTICLE 17. TERMINATION

Either party may, by written notice to the other effective no earlier than two (2) weeks of mailing, terminate this Agreement in whole or in part at any time (i) for convenience of the party, (ii) upon the failure of one party to comply with any of the terms or conditions of this agreement, or (iii) upon the VENDOR becoming insolvent or bankrupt.

Upon termination of this Agreement, the VENDOR shall comply with any and all CITY closeout procedures, including, but not limited to:

A. Accounting for and refunding to the CITY within thirty (30) days, any unexpended funds which have been paid to VENDOR pursuant to this Agreement; and

B. Furnishing within thirty (30) days an inventory to the CITY of all equipment, appurtenances and property purchased by VENDOR through or provided under this Agreement, and carrying out any CITY directive concerning the disposition thereof.

In the event the CITY terminates this Agreement in whole or in part, as provided in this Article, the CITY may procure, upon such terms and in such manner as deemed appropriate, SERVICES similar to those so terminated, and the VENDOR shall continue the performance of this Agreement to the extent not terminated hereby. If this Agreement is terminated in whole or in part for other than the convenience of the CITY, any SERVICES or goods procured by the CITY to complete the SERVICES herein will be charged to VENDOR and/or set-off against any sums due VENDOR.

Notwithstanding any other provision of this Agreement, VENDOR shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of VENDOR'S breach of the Agreement or failure to perform in accordance with applicable standards, and the CITY may withhold payments to VENDOR for the purposes of set-off until such time as the exact amount of damages due to the CITY from VENDOR is determined.

The rights and remedies of the CITY provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

ARTICLE 18. GENERAL RELEASE

The acceptance by VENDOR or its assignees of the final payment under this Agreement, whether by Claimant's Certification form, judgment of any court of competent jurisdiction, or administrative means shall constitute and operate as a general release to the CITY from any and all claims of VENDOR arising out of the performance of this Agreement.

ARTICLE 19. SET-OFF RIGHTS

The CITY shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but are not limited to, the CITY'S right to withhold for the purposes of set-off any monies otherwise due VENDOR (i) under this Agreement, (ii)

under any other agreement or contract with the CITY, including any agreement or contract for a term commencing prior to or after the term of this Agreement, (iii) from the CITY by operation of law, the CITY also has the right to withhold any monies otherwise due under this Agreement for the purposes of set-off as to any amounts due and owing to the CITY for any reason whatsoever including, without limitation, tax delinquencies, fee delinquencies or monetary penalties or interest relative thereto.

ARTICLE 20. NO ARBITRATION

Any and all disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to arbitration unless specifically agreed thereto in writing by the City Manger of the CITY, but must instead only be heard in the Supreme Court of the State of New York, with venue in Orange County or if appropriate, in the Federal District Court with venue in the Southern District of New York, White Plains division.

ARTICLE 21. GOVERNING LAW

This Agreement shall be governed by the laws of the State of New York. VENDOR shall render all SERVICES under this Agreement in accordance with applicable provisions of all federal, state and local laws, rules and regulations as are in effect at the time such SERVICES are rendered.

ARTICLE 22. CURRENT OR FORMER CITY EMPLOYEES

VENDOR represents and warrants that it shall not retain the SERVICES of any CITY employee or former CITY employee in connection with this Agreement or any other agreement that said VENDOR has or may have with the CITY without the express written permission of the CITY. This limitation period covers the preceding three (3) years or longer if the CITY employee or former CITY employee has or may have an actual or perceived conflict of interests due to their position with the CITY.

For a breach or violation of such representations or warranties, the CITY shall have the right to annul this Agreement without liability, entitling the CITY to recover all monies paid hereunder and VENDOR shall not make claim for or be entitled to recover, any sum or sums otherwise due under this Agreement. This remedy, if effected, shall not constitute the sole remedy afforded the CITY for such falsity or breach, nor shall it constitute a waiver of the CITY'S right to claim damages or otherwise refuse payment or to take any other action provided for by law or pursuant to this Agreement.

ARTICLE 23. ENTIRE AGREEMENT

The rights and obligations of the parties and their respective agents, successors and assignees shall be subject to and governed by this Agreement, including Schedules A and B, which supersede any other understandings or writings between or among the parties.

ARTICLE 24. MODIFICATION

No changes, amendments or modifications of any of the terms and/or conditions of this Agreement shall be valid unless reduced to writing and signed by the party to be bound. Changes in the scope of SERVICES in this Agreement shall not be binding, and no payment shall be due in connection therewith, unless prior to the performance of any such SERVICES, the City Manager of the CITY, after consultation with the Department Head and Corporation Counsel, executes an Addendum or Change Order to this Agreement, which Addendum or Change Order shall specifically set forth the scope of such extra or additional SERVICES and the amount of compensation and the extension of the time for performance, if any, for any such SERVICES. Unless otherwise specifically provided for therein, the provisions of this Agreement shall apply with full force and effect to the terms and conditions contained in such Addendum or Change Order.

IN WITNESS THEREOF, the parties hereto have executed this Agreement as of the date set forth above.

THE CITY OF NEWBURGH

VENDOR

BY: _____
RICHARD F. HERBEK,
ACTING CITY MANAGER

BY: _____

DATE: _____

DATE: _____

APPROVED AS TO FORM:

MICHELLE KELSON,
CORPORATION COUNSEL

CHERYL A. GROSS,
COMPTROLLER

Bell Engineering, PLLC
 Site Design Municipal Engineering GIS Services
 334 North Fostertown Drive
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Fee Schedule 2012

<u>Service Description</u>	<u>Fees</u>
Private Sector Clients	
Principal Engineer	
GIS Field Collection w/ Data Collector	\$125.00/hr
	\$140.00/hr
Public Sector Clients	
Principal Engineer	
In-House Consulting	\$90.00/hr
GIS Field Collection w/Data Collector	\$65.00/hr
	\$80.00/hr
<u>Deliverables</u>	<u>Costs</u>
Black and White Text/line	
12" x 18" Sheet	
24" x 36" Sheet	\$1.00
Check Plotting non-standard sizes	\$4.00
	75¢/sf
Color Plain Paper	
12" x 18" Sheet	
18" x 24" Sheet	\$5.00
24" x 36" Sheet	\$12.00
Non-standard sizes	\$18.00
	\$3.00/sf
Color Photo/Photo Paper	(Using Epson 7800 & Ultra Chrome Inks)
12" x 18" Sheet	\$20.00
16" x 20" Sheet	\$25.00
18" x 24" Sheet	\$35.00
24" x 36" Sheet	\$50.00
Mylars	
Final Mylar Printing	\$3.00/sf
Binding	
Bind and Cover	\$7.00
Mileage Reimbursement	\$0.50/mile
Trip Fee, includes T&M	\$1.00/mile